

REMARKS

This is a full and timely response to the outstanding final Office Action mailed November 18, 2004. Reconsideration and allowance of the application and presently pending claims 1-41 are respectfully requested.

1. **Present Status of Patent Application**

Claims 1-41 remain pending in the present application. No claim amendments are made herewith.

2. **Response to Rejection of Claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 Under 35 U.S.C. §102(e)**

In the Office Action, claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable by *Engel et al.* (U.S. Patent 6,320,585), hereinafter *Engel*. ***For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim.*** See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

a. **Procedurally Improper Rejection Under 35 U.S.C. §102**

Applicant points out to the Examiner that for proper rejection under 35 U.S.C. §102, “the reference must teach every aspect of the claimed invention either explicitly or impliedly.” [MPEP7.0602(a), Distinction between 35 U.S.C. 102 and 103.]

The Office Action, at page 16, responds to the Applicant’s arguments of their previous response by stating that:

Engel at al. teaches a summary period corresponding to a different portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34); and wherein each summary period corresponds to a plurality of days on interest, and wherein the portion is less than a day (CL5, L8-15; CL1, L6 to CL2, L5). Engel et al. states that the polling takes place at regular polling interval (e.g. every 15 minutes) (CL 16, L61-62) and the method displays performance information over a preselected period of time (CL1, L54-56). ***It would be obvious to one of ordinary skill in the art that the preselected time could be any portion of the day.*** (Emphasis added)

As shown by the section above, the Office Action is *asserting* that “something more” is required of *Engel*. That is, something more is needed to modify the teachings of *Engel* to arrive at the features of the claimed invention since the Office Action states that “*it would be obvious to one of ordinary skill in the art that ...*” Here, the Office Action is modifying the teachings of *Engel*, yet the Office Action maintains the rejection under 35 U.S.C. §102.

If it is *obvious* to modify *Engel* in any manner, as the Office Action is stating above, then the Applicant believes that a proper rejection should be asserted under 35 U.S.C. §103. Accordingly, Applicant requests that the rejection of at least the independent claims 1, 12, 23, 34 and 36-41 be asserted under 35 U.S.C. §103.

MPEP section 706.02(j) indicates that “it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. ... It is important that the written record clearly explain the rational for decisions made during prosecution of the application.” Applicant asserts that the rejection of at least independent claims 1, 12, 23, 34 and 36-41 is improper because the alleged teachings in *Engel* must be modified since it “would be *obvious* to one of ordinary skill in the art that the preselected time could be any portion of the day,” as stated in the Office Action. That is, the Applicant is unable to fairly reply to the Office Action allegation because the rejection itself is improperly asserted under 35 U.S.C. §102.

b. Interpretation of the *Engel* “Polling” by the Office Action

The Office Action, at page 16, responds to the Applicant’s arguments by stating that:

Engel at al. teaches a summary period corresponding to a different portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34): and wherein each summary period corresponds to a plurality of days on interest, and wherein the portion is less than a day (CL5, L8-15; CL1, L6 to CL2, L5). Engel et al. states that the *polling takes place at regular polling interval* (e.g. every 15 minutes) (CL 16, L61-62) and the method displays performance information over a preselected period of time (CL1, L54-56). It would be obvious to one of ordinary skill in the art that the preselected time could be any portion of the day. (Emphasis added)

For the reasons below, Applicant believes that the Office Action has interpreted the teachings of *Engel* regarding times associated with the polling (collection) of data to be the same as times associated with the reporting of data. Accordingly, for the reasons provided below, Applicant believes that the Office Action has misapplied *Engel* in the rejection of at least independent claims 1, 12, 23, 34 and 36-41.

The Office Action asserts that *Engel* “states that the polling takes place at regular polling interval (e.g. every 15 minutes) (CL 16, L61-62).” Applicant points out that “polling” relates to the collection of data. The *Engel* data polling (data collecting) has nothing to do with times used for reporting of subsequently analyzed data. Independent claims 1, 12, 23, 34 and 36-41 are directed to systems and methods for reporting analyzed data.

For example, claim 1 recites the feature of a “means for processing a retrieved plurality of selected data parameters into a plurality of performance parameters corresponding to actual performance of said communication device during each of said summary periods and a plurality of trend parameters to predict future performance of said communication device” (emphasis added). When *Engel* is properly applied to the above-recited features of claim 1, since the *Engel* “polling takes place at regular polling interval (e.g. every 15 minutes)”, then, at most, *Engel* teaches that the processed and retrieved plurality of selected data parameters recited in claim 1 would be available in 15 minute intervals.

Claim 1 then recites a “means for presenting and displaying said plurality of performance parameters associated with each said summary period, and for presenting and displaying said plurality of trend parameters associated with said report period, in a trend report” (emphasis added). The time used for presenting and displaying the recited “performance parameters” and “trend parameters” are not the same as times used for collecting the recited “data parameters” (which *Engel* teaches may be collected in the 15 minute polling intervals).

Something more is required to modify the teachings of *Engel* (which is limited to teaching that data may be collected in 15 minute polling intervals) to infer that the recited performance parameters and/or trend parameters may be presented and displayed in 15 minute intervals. Thus, the limited disclosure of the *Engel* 15 minute polling intervals (for collecting data) does not meet the requisite level of disclosure to properly support a rejection

under 35 U.S.C. §102 of the recited “performance parameters” and “trend parameters” (which are used for presenting and displaying). That is, the *Engel* 15 minute polling intervals are not the same as the times of the day used for presenting and displaying the recited “performance parameters” and “trend parameters.”

c. Interpretation of the *Engel* “Preselected Period of Time”

The Office Action, at page 16, responds to the Applicant’s arguments by stating that:

Engel at al. teaches a summary period corresponding to a different portion of the reporting period (CL1, L54 to CL2, L5; CL8, L22-34): and wherein each summary period corresponds to a plurality of days of interest, and wherein the portion is less than a day (CL5, L8-15; CL1, L6 to CL2, L5). Engel et al. states that the polling takes place at regular polling interval (e.g. every 15 minutes) (CL 16, L61-62) and the method displays performance information over a preselected period of time (CL1, L54-56). It would be obvious to one of ordinary skill in the art that the preselected time could be any portion of the day. (Emphasis added)

Applicant believes that the Office Action has interpreted the *Engel* “period of time” to be the same as that used for reporting and displaying the portion of the summary periods “specified by the times of the day” (recited in claim 1, for example). Accordingly, the Office Action has misapplied *Engel* in rejection of at least independent claims 1, 12, 23, 34 and 36-41.

The Office Action asserts that *Engel* discloses displaying “performance information over a preselected period of time (CL1, L54-56).” For the convenience of the Examiner, the entire relevant cited portion of *Engel* is repeated below:

In general, in one aspect, the invention is a method of *displaying information relating to performance over a preselected period of time of a computer resource that is connected to a communication network*. The method includes the step of periodically sampling over the network data relating to performance of the resource so as to generate stored values for a preselected performance variable for that resource. The periodic *sampling taking place over a preselected period of time* and the preselected performance variable takes on values within a specified range of possible values. The method also includes dividing the specified range of possible values for the preselected performance variable into a plurality of subranges; for each subrange, determining for what proportion of the preselected period, the values of the preselected performance variable fall within that subrange; and for each subrange, *displaying in graphical form the proportion of the preselected period of time that the values of the preselected performance*

variable fell within that subrange. (Col. 1, line 54 to Col. 2, line 5, emphasis added)

The teachings of *Engel* should be construed on the whole. Therefore, the express disclosure of *Engel* which states that the “invention is a method of displaying information relating to performance over a preselected period of time of a computer resource that is connected to a communication network” must be considered on the whole. When considering the sentence above, the *Engel* “preselected period of time” is expressly taught as relating to the time of “a computer resource that is connected to a communication network.”

The next two sentences of *Engel* precisely defines what *Engel* means by the disclosed “preselected period of time.” *Engel* states that “the method includes the step of periodically sampling over the network data relating to performance of the resource so as to generate stored values for a preselected performance variable for that resource. The periodic *sampling taking place over a preselected period of time* and the preselected performance variable takes on values within a specified range of possible values.”

Two very critical points are to be noted regarding the above disclosure by *Engel*. First, the *Engel* “preselected period of time” relates to data sampling (polling). Accordingly, *Engel* is merely stating that the polled data is collected based upon the *Engel* “preselected period of time.” Accordingly, *Engel is not disclosing*, at least here, that the “preselected period of time” relates to anything other than data sampling (polling).

Second, at the end of the above-recited paragraph, *Engel* discloses “displaying in graphical form the proportion of the preselected period of time that the values of the preselected performance variable fell within that subrange.” Here, *Engel* is not disclosing that the displayed graphics are presented by the “preselected period of time” used for the data polling (collection), but rather, is disclosing that a “proportion of the preselected period of time” is displayed. This is entirely different than specifying times of the day (to define the summary period of claim 1, for example), and then presenting and displaying the processed results (summary periods and trend parameters) based upon the specified times of the day.

b. Independent Claims 1, 12, 23, 34 and 36-41

Applicant respectfully submits that independent claims 1, 12, 23, 34, 37-39 and 41 are allowable for at least the reason that *Engel* does not disclose, teach, or suggest the feature of a “summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and specified by the times of the day that are of interest” as recited in claims 1, 12, 23, 34, 37-39 and 41. Similarly, independent claims 36 and 41 are allowable for at least the reason that *Engel* does not disclose, teach, or suggest the feature of a “plurality of selected data parameters corresponds to a plurality of summary periods, and wherein each said summary period corresponds to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and selected by the times of the day that are of interest” as recited in claim 36, and a “plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and specified by the times of the day that are of interest” as recited in claim 41.

As stated in the Response to the Office Action of May 20, 2004, Applicant believes that *Engel* does not disclose, teach, or suggest displaying a summary period corresponding to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and specified by the times of the day that are of interest. Thus, *Engel* does not anticipate independent claims 1, 12, 23, 34, 36-41 because *Engel* does not teach, disclose or suggest *any type of a graphed and/or displayed period that is less than a full day*. Accordingly, the rejection should be withdrawn.

c. Dependent Claims 2, 8-10, 13, 19-21, 24, 30-32 and 35

Applicant respectfully submits that independent claims 2, 8-10, 13, 19-21, 24, 30-32 and 35 are allowable for at least the following reasons.

Because independent claim 1 is allowable over the cited art of record, dependent claims 2 and 8-10 (which depend from independent claim 1) are allowable as a matter of law for at

least the reason that the dependent claims 2 and 8-10 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claims 12, 23 and 34 are allowable over the cited art of record, dependent claims 13 and 19-21 (which depend from independent claim 12), dependent claims 24 and 30-32 (which depend from independent claim 23), and dependent claim 35 (which depends from independent claim 34) are allowable as a matter of law for at least the reason that the above-described dependent claims contain all features/elements/steps of their respective independent claim. Accordingly, the rejection to these claims should be withdrawn.

3. Response to Rejection of Claims 3, 14 and 25 Under 35 U.S.C. §103

In the Office Action, claims 3, 14 and 25 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel*, in view of *VanDervort* (5,699,346). Claims 4-7, 15-18 and 26-29 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel* in view of *VanDervort*, and further in view of *Grevious* (US. Patent 6,167,310). Finally, claims 11, 22 and 33 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel* in view of *Colmant et al.* (U.S. Patent 6,144,662).

In the Office Action, *Engel* is used as a reference under 35 U.S.C. §103(a) for rejection of claims 3, 4-7, 11, 14-18, 22, 25-29 and 33. As stated in the Response to the Office Action of May 20, 2004, Applicant respectfully re-asserts that *Engel is not a valid reference* against the Applicant's invention because *Engel teaches away* from the above-listed claims. For brevity, Applicant is not again repeating his arguments, but do traverse the Examiner's conclusion that *Engel* does not teach away from the present invention to preserve his rights during appeal.

However, to address the rejection of these claims, since Applicant believes that independent claims 1, 12, 23, 34 and 36-41 are allowable (in view of the arguably improper rejection under 35 U.S.C. §102), claims 3, 4-7, 11, 14-18, 22, 25-29 and 33 are allowable as a matter of law for at least the reason that these dependent claims contain all features/elements of their respective independent claim. Accordingly, the rejection to these claims should be withdrawn.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now 1-41 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



Raymond W. Armentrout
Reg. No. 45,866

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500